S.B.CIVIL MISC. APPLICATION NO.8/2004
IN
S.B.CIVIL SECOND APPEAL NO.137/1986

DATE OF ORDER ::: 25.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. D Mulchandani, for the applicants
Mr. RK Thanvi, for the respondents

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Heard learned counsel for the parties.

S.B.Civil Second Appeal No.137/1986 was dismissed by this Court by order dated 28.10.2003. The applicants have submitted this application for setting aside the abatement of the appeal and in the alternative recalling of the order dated 28.10.2003.

According to the applicants, in fact, the name of none of the advocates of appellants was shown in the cause list and, therefore, they could not appear before the Court on 28.10.2003.

On 28.10.2003, it was brought to the notice of the Court by the learned counsel for the respondents that the respondents have submitted application stating therein that the respondent no.1 Karim Bux died in the year 1994. According to applicants, in fact, Karim Bux died in the year 1987 and his name was deleted by this Court's order

dated 8.12.1987. The respondents also submitted that respondent no.3 Gulamnabi and respondent no.5 Gani was also died in the years 1999 and 1998 respectively but no steps have been taken for bringing the legal representatives of deceased respondents no.3 and 5. This Court in absence of counsel for the appellants relied upon the submission of learned counsel for the respondents and held that the appeal has abated.

It is stated in the application by the appellants that in fact, the suit was filed against Chipa Paliwal Samaj, Balotra after obtaining permission under Order 1 Rule 8 CPC and in this appeal, the respondents no.1, 3 and 5 have been impleaded as party in representative capacity and there is no personal interest of these persons. Rest of the respondents fully represent the Chipa Paliwal Samaj, therefore, because of death of respondents no.3 and 5, the appeal has not abated.

Learned counsel for the respondents also agrees that the suit was filed in the representative capacity.

In view of the above, even after the death of respondents no.1, 3 and 5, if no steps have been taken for bringing on record their legal representatives, the appeal has not abated and, therefore, the application filed by the appellants deserves to be allowed, hence, allowed. The abatement of S.B.Civil Second Appeal No.137/1986 ordered by this Court on 28.10.2003 is set aside. S.B.Civil Second

Appeal No.137/1986 is restored to its original number.

Learned counsel Mr. RK Thanvi has put in appearance on behalf of the respondents in this application and submits that he is representing the respondents in S.B.Civil Second Appeal No.137/1986, therefore, list S.B.Civil Second Appeal No.137/1986 after showing the name of learned counsel Mr. RK Thanvi for the respondents in S.B.Civil Second Appeal No.137/1986 in future.

(PRAKASH TATIA), J.

S.Phophaliya